

PURCHASING AND LICENSING COMMITTEE

12-0461R

RESOLUTION IN THE MATTER OF THE ON SALE WINE LICENSE AND  
ON SALE 3.2 PERCENT MALT LIQUOR LICENSE OF TRM, INC.  
(SAMMY'S PIZZA & RESTAURANT), 403 NORTH CENTRAL AVENUE.

CITY PROPOSAL:

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

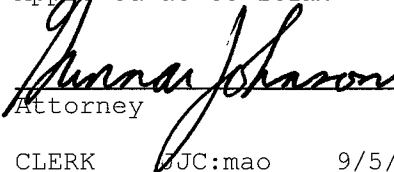
(a) On July 10, 2012, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of TRM, Inc., d/b/a Sammy's Pizza & Restaurant, 403 North Central Avenue, and has submitted its report to the city council of the city of Duluth as Public Document No. \_\_\_\_\_;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on September 24, 2012, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. \_\_\_\_\_ regarding any suspension, revocation and/or civil penalty relating to the on sale wine and 3.2 percent malt liquor licenses of TRM, Inc., d/b/a Sammy's Pizza & Restaurant, 403 North Central Avenue, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: due to the mitigating circumstances adopted in the finding of facts, the city council imposes a \$300 civil penalty payable within 30 days of final council action.

Approved as to form:

  
\_\_\_\_\_  
Attorney

CLERK JJC:mao 9/5/2012

STATEMENT OF PURPOSE: The alcohol, gambling and tobacco commission (AGTC) held a hearing on July 10, 2012, regarding the on sale wine and beer license of Sammy's Pizza. On March 29, 2012, the police department conducted alcohol compliance checks and the bartender was ticketed for sale of alcohol to an underage individual. The licensee is responsible for the conduct of the employees and was also ticketed for sale of alcohol to an underage individual. This is the first offense for the licensee, and Section 8-9 provides that the presumptive penalty for a first offense is a \$500 penalty. The AGTC concluded that because this is the first violation for the licensee in 31 years and has alcohol training in place for the employees, mitigating circumstances exist and are recommending the civil penalty be reduced to \$300 payable within 30 days of council action.

CITY OF DULUTH  
ALCOHOL, GAMBLING AND TOBACCO COMMISSION

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**REPORT TO THE CITY COUNCIL**

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IN THE MATTER OF: **TRM, INC., d/b/a Sammy's Pizza & Restaurant**, 403 N. Central Avenue, Duluth, Minnesota 55807.

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission on July 10, 2012, in Room 303, City Hall in Duluth, Minnesota. The hearing record closed on July 10, 2012 upon completion of the hearing.

Terri L. Lehr, Assistant City Attorney, City of Duluth, Office of the City Attorney, 410 City Hall, Duluth, Minnesota, 55802, appeared on behalf of the City licensing staff. Mike Jerulle, authorized agent, appeared on behalf of the Licensee.

This Report is a recommendation, not a final decision. The Duluth City Council will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusion and Recommendations contained herein. Pursuant to Minn.Stat. §14.61, the final decision of the Council shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by the Report to file exceptions and present argument to the City Council. Parties should contact the City Clerk to ascertain the procedure for filing exceptions or presenting argument.

**FINDINGS OF FACT**

The commission makes the following findings of fact.

1. Licensee is licensed by the City of Duluth to sell wine "on sale" and beer "on-sale" at the premises located at 403 N. Central Avenue, Duluth, Minnesota.
2. On March 29, 2012, an employee of Licensee was issued a citation for sale of an alcoholic beverage to a person under the age of 21 in violation of Duluth City Code section 8-28. The employee was convicted of this offense on April 6, 2012 and paid a fine of \$50.00.

3. The Licensee was also issued a citation under Duluth City Code section 8-35 for the illegal sale, was convicted of this offense on April 24, 2012 and paid a fine of \$200.00.
4. The Commission then issued its Notice of and Order for Hearing and set a hearing date of July 10, 2012.
5. This is the Licensee's first violation for purposes of the presumptive penalty schedule provided for in Duluth City Code section 8-9. Mitigating circumstances include the following: The Licensee has been in business for 31 years with no prior violations. The Licensee has a training program in place and training will continue.

### **CONCLUSIONS**

Based upon these facts, the commission makes the following conclusions:

1. Section 8-9(b)(1) of the Duluth City Code provides that the violation of any law relating to the operation of a liquor establishment shall be deemed to be good cause for disciplinary action up to and including imposition of a civil penalty, license suspension or license revocation.
2. Section 8-35 of the Duluth City Code provides that the licensee shall be responsible for the conduct of its place of business and any violation of Chapter 8 of the Duluth City Code committed on the licensed premises by an employee of the licensee shall be deemed the act of the licensee as well as the employee.
3. The Licensee is liable for the violation occurring on its licensed premise on March 29, 2012.
4. Section 8-9(c) of the Duluth City Code provides that the presumptive penalty for the current violation is a \$500 civil penalty. Mitigating circumstances exist as follows: The Licensee has been in business for 31 years with no prior violations. The Licensee has a training program in place and training will continue.

### **RECOMMENDATION**

It is the recommendation of the Duluth Alcohol, Gambling and Tobacco Commission that the Duluth City Council impose a civil penalty as follows:

1. Payment of a \$300 penalty; and
2. Pursuant to Duluth City Code Section 8-9 (c), the civil penalty is due and payable within 30 days of council action.

Dated: \_\_\_\_\_

**DULUTH ALCOHOL, GAMBLING  
AND TOBACCO COMMISSION**

By: \_\_\_\_\_  
Jon Donahue, President

CITY OF DULUTH

ALCOHOL, GAMBLING AND TOBACCO COMMISSION

\* \* \* \* \*

NOTICE OF HEARING

\* \* \* \* \*

TO: **TRM, INC, d/b/a Sammy's Pizza & Restaurant**, Attention: Mike Jerulle, 403 N. Central Avenue, Duluth, Minnesota 55807.

PLEASE BE ADVISED that on **July 10, 2012**, at **4:45 p.m.** in the Council Chambers at City Hall in the City of Duluth, the Duluth Alcohol, Gambling and Tobacco Commission will hold a hearing, pursuant to Minnesota Statutes §340A.415 and Section 8-9 of the Duluth City Code, to consider what, if any, disciplinary action, including suspension or revocation or a civil fine of not to exceed \$2,000, will be recommended to the Duluth City Council with respect to your intoxicating liquor license.

If you do not appear at said hearing, the Alcohol, Gambling and Tobacco Commission may, in your absence, recommend that the Duluth City Council consider the allegations contained herein to be true.

At the above-mentioned hearing, you may, at your option, be represented by legal counsel.

The Rules for Contested Case Hearings Minnesota Rules Chapter 1400, Part 5550, et.seq, to the extent applicable, and Minnesota Statutes §14.57 through §14.69 govern. Copies of these laws and rules may be obtained at the Duluth Public Library or online from the official web site of the State of Minnesota.

The City will present its case, and then you will have an opportunity to present your case. At the time of the hearing, you should be prepared to produce any evidence and arguments you feel are relevant to the issues raised. You or your attorney will be allowed

to cross-examine all adverse witnesses. If needed, subpoenas are available (Minnesota Rules 1400.7000).

You must advise the Commission if you seek to admit evidence that is classified not public. If data that is not public is admitted, it may become public. Relief is available under Minnesota Statutes §14.60, subd. 2. If an interpreter is needed, you must inform the Commission and one will be appointed.

**A notice of appearance must be filed with the City Clerk within 20 days of the date of service of the notice of hearing if you intend to appear at the hearing unless the hearing date is less than 20 days from the issuance of the notice of hearing.**

**The person representing the City, who you should contact to discuss settlement or other concerns is Terri L. Lehr, Assistant City Attorney.**

The hearing will be open to the public.

The following facts give rise to the inquiry and hearing mentioned above:

1. TRM, Inc. d/b/a Sammy's Pizza & Restaurant, is licensed by the City of Duluth to sell beer "on-sale" at the premises located at 403 N. Central Avenue, Duluth, Minnesota 55807.
2. On or about March 29, 2012, Adam L. Town, an employee of Licensee, sold an alcoholic beverage to an underage person at Licensee's business establishment known as Sammy's Pizza & Restaurant. Town was cited for the violation and convicted on April 6, 2012. *See City Docs. 1-3 (Duluth Police Department Report ICR# 12-053200; City of Duluth Ordinance Violation Ticket LP100004703; and Proof of Payment of \$50 fine).*
3. Licensee was cited under Duluth City Code section 8-35 for the unlawful sale and convicted of this offense on April 24, 2012, paying a fine of \$200.00. *See City Docs. No. 4-5 (City of Duluth Ordinance Violation Ticket LP100001769 and Proof of Payment of \$200 fine on 4/24/2012.)*

4. This is the Licensee's first violation for purpose of the presumptive penalty schedule provided for in Duluth City Code section 8-9. The presumptive penalty on a first offense is a \$500 civil penalty.
5. Section 8-9(b)(1) provides that violation of any law relating to the operation of a liquor establishment shall be deemed good cause for suspension or revocation of a liquor license.
6. Section 8-9 (c) provides that "No portion of the payment of a civil penalty or period of suspension may be stayed or excused. All civil penalties are due and payable within 30 days of council action. The council shall determine the dates any suspension shall be served, but in no event may the suspension period commence earlier than ten days after council action."

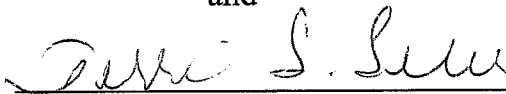
Pursuant to City Code Sections 8-9(a) and (b) the Alcohol, Tobacco and Gambling Commission will consider whether the violation alleged is good cause for suspension or revocation of the liquor license or for the imposition of a civil penalty.

(Records Supporting This Notice Are Attached As City Document Numbers 1-5).

Dated: 5/18/12

JEFFREY J. COX, Secretary  
Alcohol, Gambling and Tobacco  
Commission

and

  
\_\_\_\_\_  
TERRI L. LEHR, (0191668)  
Assistant City Attorney

Gunnar B. Johnson, City Attorney  
Attorneys for the Alcohol, Gambling and  
Tobacco Commission



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**Duluth Police Department  
Main Office**

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**Reported Date:** 03/29/2012   **Time:** 21:40   **Case No.:** 12053200

**Code:**      **Crime:**

**Class:**      **Occurrence Date:**

**Location:** 403 CENTRAL AVE N, 1DU, , , ,

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**NARRATIVE**

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**Synopsis:**

On 03/29/2012 at 2140 hours, I, Officer R. Tinsley, Squad 81, along with Officer Hurst, Squad 86, were inside 403 North Central Avenue, Sammy's Pizza Restaurant, conducting alcohol compliance checks. Officer Hurst, Squad 86, and myself sent in two decoys, BRANDON LEE HOEL DOB 03/03/92 and MELANIE JANE MORRELL DOB 05/12/1993. MORRELL and HOEL walked inside Sammy's Pizza and sat down at a table on the other side of the restaurant.

Officer Hurst, Squad 86, and I stood in the entryway and were looking at menus observing both HOEL and MORRELL. A waiter, later identified as ADAM LEE TOWN DOB 03/18/88, approached the table. TOWN left the table and a short time later came back with two glass mugs of beer and placed them on the table in front of HOEL and MORRELL. TOWN left the table and went towards the kitchen area. HOEL and MORRELL got up from the table and proceeded to the entrance and out the front door. MORRELL and HOEL indicated to us that they were served alcoholic beverages.

I stood in the entryway as Squad 86, Officer Hurst, went out to the vehicle to get his clipboard and a ticket book. Officer Hurst and I made contact with the manager and met with TOWN in the back of the restaurant so we could have privacy. Officer Hurst, Squad 86, wrote out a citation under City Ordinance Violation 8-28 - Sale of an Alcoholic Beverage to an Underage Individual. I spoke with TOWN who stated that he was having a long night and was very busy. TOWN stated that he felt overwhelmed throughout the night and was finally caught up. TOWN stated that the two individuals who he served

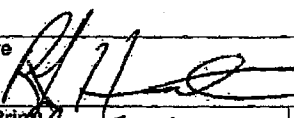
came in and he never asked for an ID. TOWN stated that he was helping another table and apparently cut a corner not asking for identification.

TOWN was handed a citation for the violation. I briefly spoke the manager of Sammy's Pizza and informed him that the Licensing Officer would be in contact with the establishment. Included with the report will be the citation issued to TOWN and a Digital Media Evidence Report, photos taken of both MORRELL and HOEL for evidence purposes.

**CITY OF DULUTH  
CITY ORDINANCE VIOLATION**

This Citation charges you with a violation  
of a Duluth City Ordinance.

For more information, see the reverse side of this ticket.

ICR Number <u>3200</u> <u>12-053200</u>		Date/Time Issued <u>3/29/12</u> <u>2142</u>	
Alleged Violator's Name <u>Adam Lee Town</u>			
Address <u>6211 Tacony St</u>		City <u>DULUTH</u>	State <u>MN</u>
		Zip Code <u>55807</u>	
DOB <u>3/18/88</u>	Phone Number <u>393-4641</u>		
Vehicle Information			
License No.	State	Reg. Expires	
Vehicle Make	Model	Color	
Violation Information			
Date of Violation <u>3/29/12</u>		Time of Violation <u>2138</u>	
Location <u>304 N. Central Ave, DULUTH</u>			
Charge <u>UNDERAGE SALE-ALCOHOL</u>		Ordinance No. <u>8-28</u>	
Description <u>SEE RPT</u>			
Officer Signature 			
Officer Name (Print) <u>Hurst R. Tinsley</u>		Badge No. <u>484/44</u>	
Served: In person <input checked="" type="checkbox"/> By mail <input type="checkbox"/>		Positively Identified <input checked="" type="checkbox"/>	
Date Due: <u>3-29-12</u>		Minimum Fine Amount Due: <input checked="" type="checkbox"/> \$50.00 <input type="checkbox"/> \$200.00 <input type="checkbox"/> \$400.00	
Ticket Number: <b>LP10 004703</b>			

Code Enforcement Ticket Entry 2 - Version 2.1.1.4

Ticket Info

Ticket Number:   
 Issue Date:   
 Issue Time:

Defendant Info

Driver Lic/State/D08:   
 Name Last/First/Mi:   
 Street Address:   
 City/State/Zip:

Financials

Free Amount:	<input type="text" value="50.00"/>	Paid/Entered:	<input type="text" value="04/06/2012"/>
Penalty:	<input type="text" value="00"/>	Return Date:	<input type="text" value=""/>
Miscellaneous:	<input type="text" value="00"/>	Notice1 Date:	<input type="text" value=""/>
Bad Check Fee:	<input type="text" value="00"/>	Notice2 Date:	<input type="text" value=""/>
Paid Amount:	<input type="text" value="50.00"/>	Notice3 Date:	<input type="text" value=""/>
Dismissed:	<input type="text" value="00"/>	Notice4 Date:	<input type="text" value=""/>
Amount Due:	<input type="text" value="00"/>	Paid Notice:	<input type="text" value=""/>
Disposition:	<input type="text" value="FF"/>	Collection Letter:	<input type="text" value=""/>
Disp Date:	<input type="text" value="04/06/2012"/>	Ticket Type:	<input type="text" value="Manual"/>
Tkt Entered:	<input type="text" value="04/06/2012"/>	Ticket Status:	<input type="text" value="PAID"/>

**CITY OF DULUTH  
CITY ORDINANCE VIOLATION**

This Citation charges you with a violation  
of a Duluth City Ordinance.

For more information, see the reverse side of this ticket.

ICR Number	12-053200		Date/Time Issued	4-10-12 @ 0800	
Alleged Violator's Name	IRM, Inc.				
Address	403 N. Central Ave.	City	Duluth	State	Zip Code
DOB	<del>BOB</del>	Phone Number	218-628-2327		
Vehicle Information					
License No.	State	Reg.	Expires		
Vehicle Make	Model	Color			
Violation Information					
Date of Violation	3-29-12	Time of Violation	2140		
Location	403 N. Central Ave				
Charge	License liable for drunk	Ordinance No.	8-35		
Description employee of licensee sold alcohol to minors during compliance check. licensee is liable for unauthorized sale					
Officer Signature	<i>Aha Yang</i>				
Officer Name (Print)	Aha Yang	Badge No.	375		
Served: In person <input type="checkbox"/>	By mail <input checked="" type="checkbox"/>	Positively Identified	<input type="checkbox"/>		
Date Due:	4-23-2012	Minimum Fine Amount Due:	<input type="checkbox"/> \$50.00 <input checked="" type="checkbox"/> \$200.00 <input type="checkbox"/> \$400.00		
Ticket Number:		LP10001769			

LocalDefendant Ticket Inquiry 2 Version 1.0

X

Ticket Info

Ticket Number

FP0001769

Issue Date

03/29/2012

Issue Time

21:40

Print Page

Cancel

Defendant Info

Driver's Lic/State/DOB

THA NC

NC

Name Last/First/MI

403 N. CENTRAL AVE.

Street Address

DULUTH

City/State/Zip

MIN

55907

Ticket Detail

Fee Amount

200.00

Penalty

50.00

Miscellaneous

.00

Bad Check Fee

.00

Paid Amount

200.00

Dinestodt

50.00

Amount Due

.00

Disposition

FF

Disp Date

04/24/2012

Tkt Entered

04/18/2012

Pymt Entered

04/24/2012

Return Date

Notice1 Date

04/24/2012

Notice2 Date

Notice3 Date

Notice4 Date

Partial Notice

Collection Letter

Ticket Type

Manual

Ticket Status

REDUCED

## AFFIDAVIT OF MAILING


STATE OF MINNESOTA )  
 )ss.  
COUNTY OF ST. LOUIS )

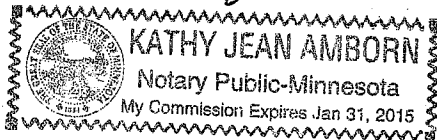
Dawn M. Anderson, being first duly sworn, on oath, deposes and says that on the 18th day of May, 2012, at the City of Duluth, St. Louis County, Minnesota, she served the attached Notice of Hearing, by depositing a copy in the United States Mail, in an envelope pre-stamped and addressed to:

TRM, Inc.  
d/b/a Sammy's Pizza and Restaurant  
Attn: Mike Jerulle  
403 North Central Avenue  
Duluth, MN 55807

Dawn M. Anderson  
Dawn M. Anderson

Subscribed and sworn to before  
me a notary public this 18th day  
of May, 2012.

  
Notary Public



**Alcohol, Gambling, and Tobacco Hearing**  
**July 10, 2012**  
**TRM, Inc., d/b/a Sammy's Pizza and Restaurant, 403 North Central Avenue**

- Lehr: This is an another uncontested matter. I've spoken with Mr. Jerulle. We spoke by phone shortly after I sent the Notice of Hearing and Mr. Jerulle has acknowledged that the violation did indeed occur - underage sale to a minor - and both the employer and the licensee have paid their tickets. The Administration does not dispute that the violation occurred. This is a first offense so the \$500.00 civil penalty would apply. That's the presumption.
- Jerulle: I think that the \$500.00 is excessive. I've been at Sammy's Pizza for 31 years and this is our first offense. We're 100% guilty. The young man that waited on the table let the second server to go home too early. He got caught. He had to make some desserts for another table. He skipped one of the most important things. We're guilty. That's about it.
- Donahue: You've been there for 31 years. This is your first?
- Girule: First offense. We have a training program. He'd been trained. He knew better.
- Donahue: Is he still working there?
- Jerulle: He's still working but he's hanging on by a thread right now.
- Donahue: Okay.
- Jerulle: I'd fire him but I don't know if he'd get a job any where else. Good kid, but a bit lazy and tough.
- Hickok: Had he been through training?
- Jerulle: Absolutely.
- Donahue: Any questions from the Commissioners?
- Hickok: Just wondering with the training process if there's any way to take that certain employee and review those guidelines again with that individual?
- Jerulle: Well, that's already happened. But, if we keep him as a employee, I'm in charge of that. College student. Knew better.



Donahue: But I can't but think it had to work it's way down the pipeline to all the other employees.

Jerulle: Oh, absolutely. You can preach and preach and preach and then when it finally happens they figured it out, it's too late.

Donahue: Right.

Hickok: I would make a motion to reduce the fine to \$300.00 this being a first offense and that training has taken place and continues to take place for all employees.

Birchland: I'll second that.

Donahue: So we have a motion.

Jerulle: I think I said that this was our first offense in 31 years.

Donahue: Well, we have a motion and then a second. Council action would be when, Martha?

Oswald: Probably in a couple months before you'll get a notice from us saying it is going in front of the Council.

Jerulle: All right.

Donahue: Okay. All in favor say "Aye"?  
Motion passes unanimously.

Donahue: Mike, you've been a great business leader in West Duluth and hope I never see you in here again.

Jerulle: I hope so. Thank you.